

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JULIE MILLER,

Plaintiff,

ORDER

v.

18-cv-094-wmc

BOARD OF REGENTS OF THE UNIVERSITY
OF WISCONSIN SYSTEM, SCOTT GRIESBACH,
ANN HOFFMAN and PHIL LYONS,

Defendant.

Plaintiff Julie Miller alleges that defendants discriminated against her based on her sexual orientation. She brings claims under Title VII, 42 U.S.C. § 2000e-2, against the Board of Regents of the University of Wisconsin System, as her employer, and claims for violations of her rights under the Equal Protection Clause pursuant to 42 U.S.C. § 1983 against all defendants, including her supervisors at the University of Wisconsin-Stout. (Compl. (dkt. #1) ¶ 7.) Before the court is defendants' partial motion to dismiss plaintiffs' § 1983 claims against the Board of Regents, as well as the individual defendants in their official capacities. (Dkt. #9.) Defendants argue that the Board of Regents, as a state agency, and the individual defendants in their official capacities are not "persons" subject to suit under § 1983. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989).

In response, plaintiff concedes that dismissal of her § 1983 claim against the Board of Regents is appropriate, but points out that the official capacity claims against the individual defendants should not be dismissed given her request for prospective relief. (Pl.'s Opp'n (dkt. #12) 2 (citing Compl. (dkt. #1) Section E (seeking "appropriate injunctive relief, including, but not limited to, a cease and desist order."))). Perhaps

recognizing the merit of this argument, defendants did not file a reply to their motion to dismiss. Regardless, the law is clear that “[o]fficial-capacity suits against state officials seeking prospective relief are permitted by § 1983.” *Williams v. Wisconsin*, 336 F.3d 576, 581 (7th Cir. 2003) (citing *Will*, 391 U.S. at 71 n.10; *Kentucky v. Graham*, 473 U.S. 149, 166 n.14 (1985)).

Accordingly, IT IS ORDERED that defendants’ partial motion to dismiss (dkt. #9) is GRANTED IN PART AND DENIED IN PART. The motion is granted as to plaintiff’s § 1983 claim asserted against the Board of Regents of the University of Wisconsin System and as to any claim for monetary damages under § 1983 against the individual defendants Scott Griesbach, Ann Hoffman and Phil Lyons’ in their official capacities. The motion is denied, however, as to plaintiff’s § 1983 claim asserted against the individual defendants in their official capacities seeking prospective relief.

Entered this 2nd day of July, 2018.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge